

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

DEC 16 1996

In the Matter of)

)
Amendment of the Commission's Rules to)
Establish Part 27, the Wireless Communications)
Service ("WCS"))

GN Docket No. 96-228

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**REPLY COMMENTS OF
PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PrimeCo Personal Communications, L.P. ("PrimeCo") hereby files its
reply comments in the above-captioned proceeding.^{1/}

PrimeCo is aware that the Commission has been set an extraordinarily
difficult task in the reallocation of the frequencies at 2305-2320 and 2345-2360 MHz to
wireless services. Specifically, the Omnibus Consolidated Appropriations Act of 1997^{2/}
("Appropriations Act") requires the use of such frequencies to be allocated by an auction,
beginning before April 15, 1997, and concluding in time to permit all auction proceeds to
be on deposit with the United States Treasury by September 30, 1997. In addition, the
Commission is directed to promote efficient use and to take into account the needs of
public safety radio services.

As demonstrated in PrimeCo's comments, however, the difficulty of the
Commission's task does not free it to establish the new Wireless Communications

^{1/} *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), GN Docket No. 96-228, FCC 96-441, Notice of Proposed Rule Making (rel. Nov. 12, 1996), summarized, 61 Fed. Reg. 59048 (Nov. 20, 1996) ("Notice").*

^{2/} Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

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Service ("WCS") without an effective spectrum allocation plan. Indeed, PrimeCo submits that the statutory mandate of the Appropriations Act and Section 309(j) of the Communications Act of 1934, as amended, requires that the Commission carefully define permissible uses, service areas and technical requirements for WCS.^{3/} Further, the comments filed in this proceeding support the conclusion that, to ensure efficient allocation of the spectrum, the Commission must adopt reasonable regulatory and technical standards, including build-out requirements, and must reject nationwide licensing for WCS.

The comments demonstrate no consensus regarding the appropriate use of the subject frequencies,^{4/} but clearly demonstrate the number and wide-ranging variety of potential uses to which entities desire to put this spectrum. Numerous comments in this proceeding demonstrate, however, that unfettered flexibility in the use of the spectrum will undermine the Commission's obligations to ensure efficient use.^{5/} Indeed, the

^{3/} See PrimeCo Comments at 6-9.

^{4/} Suggestions for spectrum use range from permitting the licensee to select the use to which it puts the spectrum to permitting data services only. *See, e.g.*, Alltel Mobile Communications Comments at 2 (supporting "open-ended" allocation), AT&T Wireless Comments at 7 n.21 (supporting Commission's proposed allocation), Interactive Services Association Comments at 1 (advocates data-only service), PCIA Comments at 7-8 (supporting allocation for broadband data service).

^{5/} See ADC Telecommunications Comments at 14; AirTouch Comments at 5; CTIA Comments at 4-6; Florida Cellular RSA Comments at 2-3; Industrial Telecommunications Association Comments at 7-9; Lucent Technologies Comments at 3-4; Motorola Comments at 5; Omnipoint Comments at 3-6; PCIA Comments at 5-6; SBC Communications Comments at 2-3; Sprint Spectrum Comments at 4-8; *see also* Alcatel Comments at 2-3 (stating that chaos will result with "[r]eliance upon market negotiations instead of on industry-developed, service-specific technical standards . . .").

comments show that, in the absence of an efficient spectrum allocation plan with appropriate technical and regulatory standards, the WCS is likely to lead to incompatible networks and equipment, interference and service disruption, thereby driving up the costs of system development and driving down the value of WCS spectrum.^{6/} In addition, the attendant regulatory treatment disparity between WCS and CMRS will give WCS licensees an unwarranted competitive advantage and undermine the value of existing CMRS licenses.^{7/}

Further, while PrimeCo continues to support licensing WCS on an MTA basis, the comments demonstrate no clear consensus on the appropriate geographic service area for WCS licenses. Nevertheless, the comments do show a consensus that the Commission should not adopt nationwide licensing for WCS; all but four of the commenters addressing this issue oppose nationwide licensing.^{8/} Nationwide licensing has

^{6/} See ADC Telecommunications Comments at 14-17; AirTouch Comments at 3-6; CTIA Comments at 4-6, 15; Industrial Telecommunications Association Comments at 7-9; Lucent Technologies Comments at 3-4; Motorola Comments at 4-7; Omnipoint Comments at 2-7; PCIA Comments at 4-6; SBC Communications Comments at 2-3; Sprint Spectrum Comments at 8, n.18; *see also* Alcatel Comments at 2-3. Even some commenters supportive of the Commission's open-ended allocation acknowledge these potential pitfalls. *See, e.g.,* Alltel Comments at 2 n.2 (acknowledging issue of market saturation); Competition Policy Institute Comments at 5; and Puerto Rico Telephone Company Comments at 2 (acknowledging issue of market saturation).

^{7/} See AirTouch Comments at 6, 10; Bell Atlantic NYNEX Mobile Comments at 13 (quoting Commissioner Quello's Separate Statement); BellSouth Comments at 12; CTIA Comments at 11-12; Omnipoint Comments at 10; PCIA Comments at 10-11; Vanguard Cellular Comments at 3, 8; *see also* Rural Telecommunications Group Comments at 15-16 (lack of buildout requirements will harm rural areas).

^{8/} *See, e.g.,* AirTouch Comments at 6-7; Alltel Comments at 3; AT&T Wireless Comments at 4-5 (it is not necessary to fashion service areas larger than MTAs); Bell Atlantic NYNEX Mobile Comments at 6-8; BellSouth Comments at 6-8; CTIA Comments at 13-14 (advocating MTA/BTA service areas); DSC Commu-

previously been considered and rejected by the Commission. Moreover, the comments demonstrate that nationwide licensing would permit the smallest number of firms to participate in this auction, ultimately reducing competition both in the auction and in the provision of WCS. Again, this result is contrary to the Commission's obligations to assure "efficient and intensive" use of the spectrum.^{2/}

For the reasons set forth herein and in PrimeCo's initial comments, PrimeCo urges the Commission to implement the new WCS in the context of a rational and efficient spectrum allocation plan. PrimeCo submits further that reasonable spectrum allocation must include reasonable technical and regulatory standards for the new service and cannot accommodate nationwide licensing. To that end, PrimeCo opposes nationwide licensing for WCS and recommends that the Commission award WCS licenses on

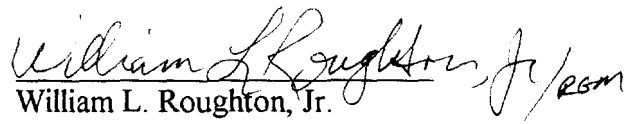
nications Comments at 4 (advocating MTAs); GTE Comments at 4; Omnipoint Comments at 7-8- 12-13; Pacific Telesis Comments at 2-4; PCIA Comments at 12-18; Pocket Communications Comments at 3; Puerto Rico Telephone Company at 3-4; Rural Telecommunications Group Comments at 3-4; SBC Communications Comments at 4-6; Sprint Spectrum Comments at 4-6; TDS Comments at 2-3, 4-5, Attachments; Vanguard Cellular Comments at 3-4; *see also* Competition Policy Institute at 4 (noting potential problems associated with nationwide licensing). PrimeCo also notes that none of the four commenting parties supporting nationwide licensing advocate CMRS use of the 2.3 GHz band. *See* ADC Telecommunications at 15-16 (SDARS and fixed terrestrial); Markle Foundation Comments at 3 n.3 (data services); Radio Order Corporation Comments (advocates using 1 MHz of the allocation for nationwide DARS); Vanderbilt University Comments at 4 (supporting Markle Foundation Comments).

^{2/} 47 U.S.C. § 309(j)(3)(D).

an MTA basis. As a final point, PrimeCo also urges the Commission to carefully consider appropriate public safety purposes consistent with its statutory mandate.

Respectfully submitted,

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Date: December 16, 1996

CERTIFICATE OF SERVICE

I, Shelia Smith, do hereby certify that I have, on this 16th day of December, 1996, served via hand delivery a copy of the foregoing PrimeCo Personal Communications, L.P. Reply Comments in GN Docket No. 96-228 upon the following:

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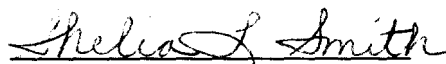
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